



**City of Miami Beach - City Commission Meeting  
Commission Chambers, 3rd Floor, City Hall  
1700 Convention Center Drive  
February 2, 2005**



Mayor David Dermer  
Vice-Mayor Simon Cruz  
Commissioner Matti Herrera Bower  
Commissioner Luis R. Garcia, Jr.  
Commissioner Saul Gross  
Commissioner Jose Smith  
Commissioner Richard L. Steinberg

City Manager Jorge M. Gonzalez  
City Attorney Murray H. Dubbin  
City Clerk Robert E. Parcher

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**ATTENTION ALL LOBBYISTS**

**Chapter 2, Article VII, Division 3 of the City Code of Miami Beach entitled "Lobbyists" requires the registration of all lobbyists with the City Clerk prior to engaging in any lobbying activity with the City Commission, any City Board or Committee, or any personnel as defined in the subject Code sections. Copies of the City Code sections on lobbyists laws are available in the City Clerk's Office. Questions regarding the provisions of the Ordinance should be directed to the Office of the City Attorney.**

PA1 Certificate of Completion/Community Emergency Response Team (CERT) Graduates.  
PA2 Certificates of Appreciation/Several Establishments, Contributing to the Beautification of CMB.

C2A Approve Purchase, (2) 2006 Thomas FS-65 47-Capacity Conventional School Buses, \$124,256.  
C4A Ref: Planning Board - Strengthening Historic Preservation Ordinance. (Gross)  
C4A1 Ref: Planning Board & Historic Preservation Board (HPB) - Miami-Dade HPB Resolution. (Bower)  
C4B Ref: Finance & Citywide Projects Committee - La Gorce Neighborhood Improvements Project.  
C4C Ref: Finance & Citywide Projects Committee - Nautilus Neighborhood Improvements Project.

C6A Report: Land Use & Development Committee Meeting of January 10, 2005.

C7A Set Public Hearing, Designation of 28<sup>th</sup> Street Obelisk & Pumping Station as Historic Structure.  
C7B Execute 1<sup>st</sup> Amendment to the Home Program Agmt, Rehabilitation of Villa Maria Apartments.  
C7C Approve Budget for FY 2004/05 to 2008/09, Marketing & Promoting Lincoln Road.  
C7D Reject All Proposals, Inspection & Assessment Services of City Buildings & Facilities.  
C7E Submit Applications for Grant Funds to Several Funding Agencies.  
C7F Reject Corporate Sponsorship RFP's & Authorize to Issue Vending Machine RFP.  
C7G Set Public Hearing, Vacation of Alley for the 5<sup>th</sup> Street & Alton Road Project.

**REGULAR AGENDA**

R5A **10:15 a.m. 2<sup>nd</sup> Rdg**, Temporary & Provisional Parking Lots Standards.  
R5B **11:00 a.m. 2<sup>nd</sup> Rdg**, Amend Restrictions - Locations where Panhandling is Prohibited. (Steinberg)  
R5C **5:15 p.m. 2<sup>nd</sup> Rdg**, Amend the "Newsracks" Ordinance.  
R5D **1<sup>st</sup> Rdg**, Nonconforming Buildings Ordinance.

R7A **5:00 p.m. Open/Cont.**, Approve Development Agmt w/ the New World Symphony, Parking Lot.  
R7B **5:10 p.m. Open/Cont.**, Approve Development Agmt for the "5<sup>th</sup> and Alton" Project.  
R7C **Joint**, Change the April 13<sup>th</sup> Commission Meeting Date to April 20<sup>th</sup>.

R7D **5:10 p.m.** Accept Recommendation, Environmental Assessment for 5<sup>th</sup> & Alton Transit Center.  
R7E Appropriate Funds, Complete Remediation Work for the Green Waste Facility.  
R7F **Joint**, Execute Modification to Sovereignty Submerged Land Lease, Miami Beach Marina.  
R7G **5:00 p.m.** Appropriate Funds, Miami Beach Golf Course Clubhouse Project.  
R7H Appropriate Funds, Construction Improvements to the Lummus Park Facilities Project.  
R7I **10:30 a.m.** Issue Revenue Bonds, Pay the Cost of Improvements to Water & Sewer Utility.

R9A Board and Committee Appointments.

R9A1 Nominate Mr. Jeremy T. Chestler to the Art in Public Places Committee. (Garcia)

R9B1 **1:30 p.m.** Dr. Stanley Sutnick Citizen's Forum.

R9B2 **5:30 p.m.** Dr. Stanley Sutnick Citizen's Forum.

R9C **Noon**, City Commission will Attend Fire Station No. 2 Ground Breaking Ceremony.

R9D Disc. North Beach Recreational Corridor & Richmond Hotel Beachwalk. (Smith)

R9E Disc. Senior Task Force. (Garcia)

R9F Disc. New Parking Pay Stations. (Bower)

R9G Disc. Proposed Plans for the "City of Miami Beach Resident Survey." (Garcia)

R10A **Noon**, Notice of Closed Executive Session: CMB v. Mickey Biss & USA Express, Inc.

### **REPORTS AND INFORMATIONAL ITEMS**

A City Attorney's Status Report.

B Status Report on Fire Station No. 2.

C Status Report on Fire Station No. 4.

D Informational Report on Federal, State, County and All Existing City Contracts.

E1 Minutes from November 16, 2004 Performing Arts Center Trust Board Meeting. (Bower)

### **REDEVELOPMENT AGENCY ITEMS - 10:00 A.M.**

2A Report of Itemized Revenues/Expenditures of RDA for December 2004.

3A **Joint**, Change the April 13<sup>th</sup> Redevelopment Agency Meeting Date to April 20<sup>th</sup>.

3B **Joint**, Execute Modification to the Sovereignty Submerged Land Lease, Miami Beach Marina.

3C Verbal Status Report on the RDP Royal Palm Hotel Limited Partnership.

Meeting called to order at 9:34:59 a.m.

Invocation given by Rabbi Samuel Vainberg, Temple Emanu-El.

Pledge of Allegiance led by Michael Aller, Tourism & Convention Director.

Michael Aller welcomed four students who are participating in Career Shadowing Day from Miami Beach Senior High School, Academy of Hospitality and Travel: Natalia Vargas, Sameina Fomento, Vanessa Londono and Juliana Pinherro.

### **Times based on the digital recording in the City Clerk's Office**

#### **Addendum item: C7G**

**ACTION:** Motion made by Commissioner Smith to add Addendum item C7G as an emergency item to the Commission Agenda; seconded by Commissioner Garcia; Voice vote: 7-0.

**Addendum item introduced at the Commission Meeting.**

Motion made by Commissioner Garcia to add, as an emergency item, a resolution urging the Miami-Dade County Mayor to veto the usage of the half-cent transportation sales tax to cover deficits and anticipated operating shortfalls in the Miami-Dade Transit and also urge the County Commission to support the veto; seconded by Vice-Mayor Cruz; Voice vote: 7-0.

The item was added as an emergency.

Commissioner Steinberg amended the motion to include asking the Dade League of Cities to pass a similar resolution at their Thursday, February 3 meeting. Commissioner Garcia accepted the amendment.

**ACTION: Discussion held. Resolution No 2005-25810 adopted.** Motion made by Commissioner Garcia to approve a resolution urging the Miami-Dade County Mayor to veto the usage of the half-cent transportation sales tax to cover deficits and anticipated operating shortfalls in the Miami-Dade Transit, to urge the County Commission to support the veto, and to ask the Miami-Dade County League of Cities to pass a similar resolution at their Thursday, February 3rd meeting; seconded by Vice-Mayor Cruz; Voice vote: 7-0; Legal Department to prepare the resolution. Commissioner Steinberg will present the Resolution at the Miami-Dade County League of Cities. R. Parcher to fax the resolution to Miami-Dade County Mayor Carlos Alvarez, the Miami-Dade County Commission, and County Manager George Burgess.

Handout or Reference Material:

1. The Miami Herald Action Line Section, Page 6B, Article by Larry Lebowitz titled Miami-Dade Transit, "Mayor might veto bailout."

**Supplemental Materials:**

C7B (Resolution), C7E (Resolution), R7F (Resolution and Lease), R7G (Resolution), R7H (Resolution), RDA 3B (Resolution)

**PA - Presentations and Awards**

PA1 Certificates Of Completion To Be Presented To The Community Emergency Response Team (C.E.R.T) Graduates.

(Neighborhood Services)

**ACTION:** Certificates of Completion presented to Ursula Gangitano, Alan Stang, Hiran Llanes, and Margaret Linial.

Jorge Gonzalez, City Manager, stated that this program started two years ago and continues to foster involvement throughout the community. These trained citizens will help in the event of a disaster. There are over 150 residents throughout the community who have been CERT trained. He recognized Assistant Chief Del Favero and David Mogen from the Fire Department.

Commissioner Garcia recognized Assistant Chief Del Favero for identifying this program and the need for the program. He stated that David Mogen created the position of public education. He commended the Fire Department and the Administration.

Assistant Chief Del Favero, Miami Beach Fire Department, announced the names of the 11<sup>th</sup> CERT graduating class.

Ursula Gangitano thanked the City Commission for allowing the Fire Department to offer this type of training. She also recognized David Mogen for his outstanding work.

Mayor Dermer recognized David Mogen, Miami Beach Fire Department, for his work with the schools and the "Cheat the Reaper" program focusing on drunk driving.

Firefighter David Mogen spoke.

Commissioner Garcia recognized David Mogen's contributions and stated that he deserves to be Firefighter of the Year.

**9:41:06 a.m.**

PA2 Certificates Of Appreciation To Be Presented To 5600 Condominium, The Dilido Ritz Carlton, Temple Menorah, St. Tropez, Mirador Town Homes And Garage, And Special Recognition To Unidad Of Miami Beach (Miami Beach Hispanic Community Center), In Recognition By The City Of Miami Beach Beautification Committee For Their Efforts In Contributing Significantly To The Beautification Of The City And Its Citizens.

(Parks & Recreation)

**ACTION:** Certificates of Appreciation presented. Mayor Dermer introduced Elizabeth Resnick, chair of the Beautification Committee, who announced this year's beautification winners.

**New Item:**

Mayor Dermer congratulated Vice-Mayor Cruz on his birthday.

**CONSENT AGENDA**

**ACTION:** Motion made by Commissioner Smith to approve the Consent Agenda; seconded by Commissioner Bower; Voice vote: 7-0.

**C2 - Competitive Bid Reports**

C2A Request For Approval To Purchase Two (2) 2006 Thomas FS-65 47-Capacity Conventional School Buses, From Freightliner Of South Florida, Pursuant To Florida Department Of Education Contract No. 2004-19, In The Amount Of \$124,256.

(Fleet Management)

**ACTION:** Award authorized. Drew Terpak to handle.

**C4 - Commission Committee Assignments**

C4A Referral To The Planning Board - Strengthening Historic Preservation Ordinance.  
(Requested by Commissioner Saul Gross)

**ACTION: Referred.** Jorge Gomez to place on the committee agenda and to handle.

C4A1 Referral To The Planning Board And The Historic Preservation Board Regarding Miami-Dade Historic Preservation Board Resolution No. 07-04.  
(Requested by Commissioner Matti Herrera Bower)

**ACTION: Referred.** Jorge Gomez to place on the committee agenda and to handle.

- C4B Referral To The Finance And Citywide Projects Committee - Discussion On Reallocation Of Funds To Provide For Additional Services To Reynolds Smith And Hills To Complete The Documents For The La Gorce Neighborhood Improvements Project.  
(Capital Improvement Projects)

**ACTION: Referred.** Patricia Walker to place on the committee agenda. Tim Hemstreet to handle.

- C4C Referral To The Finance And Citywide Projects Committee - Discussion On Reallocation Of Funds To Provide For Additional Services To Reynolds Smith And Hills To Complete The Documents For The Nautilus Neighborhood Improvements Project.  
(Capital Improvement Projects)

**ACTION: Referred.** Patricia Walker to place on the committee agenda. Tim Hemstreet to handle.

### **C6 - Commission Committee Reports**

- C6A Report Of The Land Use And Development Committee Meeting Of January 10, 2005: **1)** Discussion Regarding The Zoning Of Religious Institutions In The RS-4 District; **2)** Discussion Regarding Updating ADA Code To Include Innovative Forms Of Vehicles; And **3)** Discussion Regarding Evaluation And Appraisal Report Resolution (EAR) First Draft Submittal.

**ACTION:**

**Item No. 1:**

The Committee requested that further study be done in connection with this issue. They also requested that the Administration contact the attorney for the interested party and resolve several issues related to parking. This matter will be placed in a future committee agenda. **Jorge Gomez to Handle.**

**Item No. 2:**

The Committee heard from Public Works Department Director Fred Beckmann, Building Department Director Phillip Azan, and Barrier-Free Environment Committee member/resident Michael Brennan on this issue. Information presented established that the City of Miami Beach has no authority to change the Americans with Disabilities Act of 1990 and its attendant regulations, which are federal law. In addition, the Florida Building Code preempts the establishment of handicapped accessibility standards to the states and supercedes any county or municipal ordinance on the subject. After discussing the issue, the Committee determined that this issue would be more appropriately addressed by the Florida State Legislature.

**Item No. 3:**

The Committee reviewed the draft EAR and made several changes and comments that were incorporated into the document prior to full City Commission action.

**C7 - Resolutions**

- C7A A Resolution Setting A Public Hearing (Retroactively) To Consider The Proposed Designation Of The 28th Street Obelisk And Pumping Station As An Historic Structure By Amending The Land Development Regulations Of The Miami Beach City Code; Amending Section 118-593, "Historic Preservation Designation"; Amending Section 118-593(E), "Delineation On Zoning Map"; Amending Section 118-593(E)(1), "Historic Preservation Sites (HPS)" By Designating The 28th Street Obelisk And Pumping Station As An Historic Structure To Be Known As The "28th Street Obelisk And Pumping Station Historic Structure," Located At 300 West 28th Street And Consisting Of An Area That Includes The Original 1926 Structure And Its Appurtenances, As More Particularly Described In The Ordinance.

(Planning Department)

**ACTION: Resolution No. 2005-25798** adopted. Public Hearing scheduled for February 23, 2005. R. Parcher to notice. Lilia Cardillo to place on the Commission Agenda. Jorge Gomez to handle.

**Supplemental Materials (Resolution):**

- C7B A Resolution Authorizing The Mayor And City Clerk To Execute A First Amendment To The Home Investment Partnerships (Home) Program Agreement, Dated December 8, 2004, Between The City Of Miami Beach And Miami Beach Community Development Corporation (MBCDC) Providing \$500,000 From The \$800,000 Home CHDO Funds Previously Allocated To MBCDC By The City's One Year Action Plan For FY 2004/2005, Towards The Cost Of The Acquisition And Rehabilitation Of The Villa Maria, An Apartment Building Located At 2800 Collins Avenue, Miami Beach, To Provide An Estimated Thirty Four (34) Rental Units For Income-Eligible Elderly Tenants In Accordance With The Home Program Requirements.

(Neighborhood Services)

**ACTION: Resolution No. 2005-25799** adopted. Vivian Guzman to handle.

- C7C A Resolution Approving The Attached Budget For Fiscal Years 2004/05 Through 2008/09, Submitted By Lincoln Road Marketing, Inc. (LRMI), Utilizing Revenue Generated From The Lincoln Road Farmer's Market, The Lincoln Road Antique & Collectibles Market And Adshel Directories On Lincoln Road For The Purpose Of Marketing And Promoting Lincoln Road.

(Economic Development)

**ACTION: Resolution No. 2005-25800** adopted. Kevin Crowder to handle.

- C7D A Resolution Authorizing The Mayor And City Clerk To Reject All Proposals Received Pursuant To The Request For Qualifications (RFQ) No. 26-03/04 For Inspection And Assessment Services Of City Buildings And Facilities.

(Public Works)

**ACTION: Resolution No. 2005-25801** adopted. Gus Lopez to notify the bidders. Fred Beckmann to handle.

**Supplemental Materials (Resolution):**

C7E A Resolution Authorizing The City Manager Or His Designee To Submit Applications For Grant Funds To The Following Agencies: 1) Miami Beach Visitor And Convention Authority (VCA), FY 2004-5 Tourism Advancement Program, 4th Quarter Program For Funding In An Amount Not To Exceed \$20,000 For The City's 4th Of July 2005 Event; 2) The National Park Service's Save America's Treasures Program For Funding In An Amount Not To Exceed \$500,000 For FY 2005 Historic Preservation Fund Grants For The Restoration Of Historic City Hall; 3) State Of Florida, Office Of The Attorney General, Victims Of Crime Act (VOCA) Funding In An Amount Not To Exceed \$35,000 For Funds For The City's Domestic Violence Unit; 4) State Of Florida, Department Of Community Affairs, Division Of Emergency Management For Funding For The City's Community Emergency Response Team (CERT) Training In An Amount Not To Exceed \$25,000; Further Appropriating The Grants If Approved And Accepted By The City; And Authorizing The Execution Of All Necessary Documents Related To This Application.  
(Grants Management)

**ACTION: Resolution No. 2005-25802 adopted.** Patricia Walker to appropriate the funds if approved and accepted by the City. Judy Hoanshelt to handle.

**10:01:32 a.m.**

C7F Rejection Of Corporate Sponsorship RFP's Received April 2004 And Authorization To Issue Vending Machine RFP.

1. A Resolution Rejecting RFP #66-02/03 Regarding A Corporate Sponsorship Program.

**ACTION: Resolution No. 2005-25803 adopted. Gus Lopez to notify all bidders.**

2. A Resolution Authorizing An RFP For Vending Machine Services At City Facilities.  
(City Manager's Office)

**ACTION: Resolution No. 2005-25804 adopted.** Motion made by Commissioner Gross to proceed with the issuing of an RFP for the vending machine services at City facilities and to refer the corporate sponsors RFP to the Finance and Citywide Project Committee; and a new RFP be issued as soon as possible; seconded by Commissioner Steinberg; Voice vote: 7-0.  
**Gus Lopez to issue RFP. Patricia Walker to place this item on the February 17 committee agenda. Fred Beckmann to handle.**

Commissioner Gross stated that he would like to proceed with the sponsorship program, but would like to see how the Commission wants to proceed. He stated that he believes the sponsorship program for the recreation guides is successful. He sees the sponsorship program as a win-win, especially if the money is put back into parks programs. He made a motion to proceed with the issuing of an RFP for the vending machine services at City facilities and a new RFP be issued as soon as possible.

Jorge Gonzalez, City Manager, stated that the RFP has been amended and would like the amended RFP to be reviewed by the Finance and Citywide Projects Committee.

Commissioner Gross stated that the RFP is to hire a consultant to design a sponsorship program.

Jorge Gonzalez, City Manager, stated that the consultant evaluates the City's assets which could be sponsored and makes recommendations on which sponsorships to pursue.



Commissioner Smith stated that the one issue he has is with exclusivity, and whether the Beach concessionaire is correct when they claim they have exclusivity for sponsorships. He stated that he wants the record to be very clear that this is not the case. Nobody has exclusivity.

Jorge Gonzalez, City Manager, stated that the outcome of this program might be that some advertising is placed on some of the public facilities.

Commissioner Garcia stated that any type of revenues from the sponsorship will be a contribution to the Parks and Recreation Department, over and above the General Fund budget to ensure that the parks fees are lowered or free. This issue was also referred to the Finance and Citywide Projects Committee. **Patricia Walker to place this item on the next committee agenda.**

**Addendum:**

- C7G A Resolution Setting A Public Hearing For February 23, 2005, To Hear Public Comment, As Required By The City's Guidelines For Vacation Or Abandonment Of Streets Or Other Rights Of Way And Pursuant To Section 82-37 Of The City Code (Ordinance No. 92-2783), Regarding The Vacation Of An Alley, Containing Approximately 7,800 Square Feet, Adjacent To The Proposed AR&J SOBE, LLC (a/k/a Potamkin/Berkowitz) Project At Fifth Street And Alton Road, In Favor Of The Applicant (And Developer Of The Project), AR&J SOBE, LLC.  
(City Manager's Office)

**ACTION: Resolution No. 2005-25805** adopted. Public Hearing scheduled for February 23, 2005. R. Parcher to notice. Lilia Cardillo to place on the Commission Agenda. Christina Cuervo to handle.

**End of Consent Agenda**

**REGULAR AGENDA**

**R5 - Ordinances**

**11:12:19 a.m.**

- R5A Temporary And Provisional Parking Lots Standards  
An Ordinance Amending The Code Of The City Of Miami Beach, By Amending Chapter 130 "Off-Street Parking," Article III, "Design Standards," By Amending Section 130-70 "Temporary Parking Lot Standards;" And Section 130-71 "Provisional Parking Lot Standards" By Clarifying Existing Regulations, Prohibiting Provisional Lots In The R-PS1 Through 3 Residential Performance Standards Zoning Districts, And Modifying Landscaping Standards; Providing For Repealer, Severability, Codification And An Effective Date. **10:15 a.m. Second Reading, Public Hearing**  
(Planning Department)  
(First Reading on January 12, 2005)

**ACTION:** Public Hearing held. **Ordinance No. 2005-3474** adopted. Motion made by Commissioner Bower; seconded by Commissioner Smith; Ballot vote: 7-0. Jorge Gomez, Fred Beckmann, and Saul Frances to handle. R. Parcher to transmit to Municipal Code Corp.

**Handout or Reference Materials:**

1. Notice of Ad in The Miami Herald

**11:13:27 a.m.**

R5B An Ordinance Amending Ordinance Number 2003-3411 By Amending The Restrictions On The Locations Where Panhandling Is Prohibited And Providing For Repealer, Severability, And An Effective Date. **11:00 a.m. Second Reading, Public Hearing.**

(Requested by Vice-Mayor Richard L. Steinberg)

(Continued from December 8, 2004)

**ACTION:** After discussions the item was withdrawn.

Commissioner Smith stated that this ordinance should not be before the City Commission as an ordinance.

Sheri Sack, the City's specialist on Constitutional issues, stated that the ordinance in the agenda is not the ordinance the Neighborhood/Community Affairs Committee recommended. She stated that the new ordinance approved by the Neighborhood/Community Affairs Committee looks almost identical to the ordinance in the Agenda; however, items 1 through 4 and 8 are stricken. The Legal Department will place the revised ordinance on the February 23 Commission Meeting.

Mayor Dermer stated that the new ordinance will be sponsored by Commissioner Steinberg.

R5C An Ordinance Amending Chapter 82, Article IV, Division 3, Thereof Entitled "Newsracks" By Amending City Code Section 82-176 Entitled "Definitions" By Adding And Amending Certain Definitions; Amending Section 82-201 Entitled "Notice Of Violation Request For Hearing" By Reducing The Time Required For Notification And Amending The Method Of Notification; Amending Section 82-202 Entitled "Removal And Storage Of Newsracks" Reducing The Time Required For Notification And Time Allowed To Request A Hearing; Amending Section 82-204 Entitled "Release Of Stored Newsracks, Storage Fee, Inspection Fee" By Amending The Provisions For Return Of Stored Newsracks, And Amending Storage Fees And Reinspection Fees; Amending Section 82-205 Entitled "Unclaimed Newsracks" By Reducing The Storage Time Required Prior To Disposing Of Unclaimed Newsracks; Amending Section 82-206 Entitled "Abandoned Newsracks" Amending The Criteria For Abandoned Newsracks And Reducing The Time Required To Remove Abandoned Newsracks From The Right-Of-Way; Amending Section 82-207 Entitled "Hearings" Amending The Hearing Process; Amending Section 82-208 Entitled "Appellate Procedure After Hearings" Amending The Appellate Process; Amending Section 82-231 Entitled "Fee Letter Of Compliance Required" Modifying The Procedures And Fees For Registering Newsracks; Amending Section 82-256 Entitled "Maintenance And Installation Standards" By Amending Restrictions On The Type, Size, And Appearance Of Newsracks And Newsrack Storage Boxes And Specifications For Installing Newsracks On The Right Of Way; And Amending Section 82-257 Entitled "Placement Of Newsracks" By Amending Restrictions On The Location Of Newsracks; Providing For Codification; Severability; Repealing All Ordinance In Conflict Therewith; And Providing For An Effective Date. **5:15 p.m. Second Reading, Public Hearing.**

(Public Works)

(First Reading on January 12, 2005)

**ACTION: Public Hearing opened and continued to February 23, 2005 at 5:15 p.m.** Public Hearing opened and continued by acclamation of the City Commission. Lilia Cardillo to place on the Commission Agenda. Fred Beckmann to handle.

Handout or Reference Materials:

1. Notice of Ad in The Miami Herald

**11:22:39 a.m.**

R5D Nonconforming Buildings

An Ordinance Amending The Land Development Regulations Of The Code Of The City Of Miami Beach, By Amending Chapter 118, "Administration And Review Procedures," Article IX, "Nonconformances," By Amending Section 118-395 To Clarify And Update Certain Terms And Descriptions, And To Provide More Defined Parameters For What Constitutes A Nonconforming Structure; By Amending Section 118-398 To Clarify And Update Certain Terms And Descriptions; By Amending Section 118-399 To Clarify And Update Certain Terms And Descriptions; By Amending Chapter 130, "Off Street Parking", Article VI, "Parking Credit System" By Amending Section 130-161, To Establish Revised Standards For Non-Conforming Structures; Providing For Repealer, Codification, Severability And An Effective Date. **First Reading.**

(Planning Department)

**ACTION: Ordinance approved on First Reading and referred to the Land Use and Development Committee between the first and second reading.** Motion made by Commissioner Smith to pass on First Reading and referred to the Land Use and Development Committee; seconded by Commissioner Gross; Ballot vote: 7-0. Second Reading and Public Hearing scheduled for February 23, 2005. Jorge Gomez to place on the Land Use and Development committee agenda. R. Parcher to notice. Lilia Cardillo to place on the Commission Agenda. Jorge Gomez to handle.

Jorge Gomez, Planning Department Director, introduced the item. He also noted that a typographical error will be corrected on the second reading (1965).

Thomas Mooney, Preservation & Design Manager, spoke.

Gary Held, First Assistant City Attorney, spoke.

Commissioner Smith stated that he and Gary Held, First Assistant City Attorney, will work on the issue of reconstruction.

Commissioner Gross asked to see some examples of how much of the building has been demolished to see what effect the new ordinance would have had on projects which have already been done. The two specific cases he requested are the Collins Avenue retail projects, Ballet Valet Garage, and any other projects the Planning Department can think of. The other issue is the general, substantial rehab or a residential, multi-family apartment building in one of the historic district. **Jorge Gomez to handle.**

Commissioner Smith stated that it is important to reach out to anybody who may be affected by the ordinance. **Jorge Gomez to handle.**

**R7 - Resolutions**

- R7A A Resolution Following A Duly Noticed Public Hearing, Approving On First Reading, In Accordance With The Requirements Of Sections 163.3220 - 163.3243, Florida Statutes, Also Referred To As The "Florida Local Government Development Agreement Act," A First Addendum To The Development Agreement Between The City Of Miami Beach And The New World Symphony, Dated January 5, 2004, For The Development Of A Portion Of The Surface Parking Lot, Bounded By 17th Street To The North, North Lincoln Lane To The South, Washington Avenue To The East And Pennsylvania Avenue To The West, For Construction Of An Approximately 50,000 Square Foot Educational, Performance And Internet Broadcast Facility With An Exterior Screen ("Soundspace"), And An Approximately 320-Space (+/-) Public Parking Garage Facility; Said Addendum Specifically Amending The Development Agreement, And Authorizing The Developer To Proceed With The Design And Development Of The Park Project Compromising Of: Zone 1, Comprising The Park And Drexel Avenue Between North Lincoln Lane And 17th Street, At The City's Cost And Expense, Not To Exceed \$10,000,000; Zone 2, Comprising The Jackie Gleason Theater Of The Performing Arts (TOPA) Entry Landscaping At The City's Cost And Expense, Not To Exceed \$1,150,000; And Zone 3, Comprising North Lincoln Lane Improvements, At The City's Cost And Expense, Not To Exceed \$500,000; And Further Setting The Second Public Hearing On January 12, 2005. **5:00 p.m. Public Hearing.**

(Economic Development)  
(Continued from January 12, 2005)

**ACTION: Public Hearing opened and continued to February 23, 2005 at 5:00 p.m. and pursuant to the Commission Memorandum to refer the issues of determining the level of City funding to the Finance and Citywide Projects Committee.** Public Hearing opened and continued by acclamation of the City Commission. Lilia Cardillo to place on the Commission Agenda. Patricia Walker to place on the Finance and Citywide Projects Committee agenda. Christina Cuervo to handle.

- R7B A Resolution In Accordance With The Requirements Of Sections 163.3220 - 163.3243, Florida Statutes, Also Referred To As The "Florida Local Government Development Agreement Act", Approving, On First Reading, A Development Agreement Between The City Of Miami Beach And AR&J SOBE, Llc (A/K/A Potamkin/Berkowitz) For The Development Of The Project, Presently Referred To As "5th And Alton", Containing Approximately 179,000 Square Feet Of Retail Area, A Supermarket; An Approximate 1070 Space Parking Garage; Park-And-Ride Transit Facility, Including An Intermodal/Transportation Component, And Surrounding Streetscape And Public Infrastructure To Serve The Project, Bounded By Lenox Avenue On East, Alton Road On West, 6th Street On North And 5th Street On The South, In Miami Beach; Further Considering, On Second (And Final) Approval Of The Development Agreement; And Further Setting, For A Time And Date Concurrent With The Second And Final Reading Of The Aforestated Development Agreement, A Public Hearing, As Required Pursuant To The City's Guidelines For The Vacation Of Public Right Of Ways And Chapter 82, Article II, Sections 82-37 Through 82-38 Of The Miami Beach City Code, To Hear Public Comment Concerning The Vacation Of The Adjacent Public Alley, Generally Located Between Alton Road And Lenox Avenue, And Containing Approximately 7,800 Square Feet Of Land, For Incorporation Into The Proposed Project. **5:10 p.m. First Public Hearing.**

(City Manager's Office)  
(Continued from January 12, 2005)

**ACTION: Public Hearing opened and continued to February 23, 2005 at 5:10 p.m.** Public Hearing opened and continued by acclamation of the City Commission. Lilia Cardillo to place on the Commission Agenda. Christina Cuervo to handle.

## Handout or Reference Materials:

1. Notice of Ad in The Miami Herald

**10:16:26 a.m.**

R7C A Resolution Amending Resolution No. 2004-25742, Setting The Dates For The Year 2005 Commission Meetings; Authorizing A Change In The Commission Meeting Date From April 13, 2005 To April 20, 2005. **Joint City Commission and Redevelopment Agency.**  
(City Clerk's Office)

**ACTION: Item heard in conjunction with RDA item 3A. Resolution No. 2005-25806 adopted.** Resolution approved without objections. Robert Parcher to handle.

R7D A Resolution Accepting The Recommendation Of The City Manager Pertaining To The Ranking Of Firms Pursuant To Request For Qualifications (RFQ) No. 01-04/05 For An Environmental Assessment For The 5th And Alton Transit Center; Authorizing The Administration To Enter Into Negotiations With The Top-Ranked Firm Of HDR Engineering, Inc; Should The Administration Not Be Able To Negotiate An Agreement With The Top-Ranked Firm, Authorizing The Administration To Negotiate With The Second-Ranked Firm Of URS Corporation; Should The Administration Not Be Able To Negotiate An Agreement With The Second-Ranked Firm, Authorizing The Administration To Negotiate With The Third Ranked Firm Of Geotech Environmental.  
(Economic Development)

**ACTION: Item withdrawn by the Administration.**

City Clerk Cross reference: 5<sup>th</sup> and Alton transit Center / Potamkin / Berkowitz / FTA

**12:04:46 p.m.**

R7E A Resolution Authorizing The Mayor And City Clerk To Appropriate Funds From The Sanitation Enterprise Fund Retained Earnings To Complete Remediation Work For The Green Waste Facility For Fiscal Year 2004/2005 In The Amount Of \$326,761.  
(Public Works)

**ACTION: Resolution No. 2005-25807 adopted.** Motion made by Commissioner Bower; seconded by Commissioner Smith; Voice vote: 6-0; Absent: Vice-Mayor Cruz. Patricia Walker to appropriate the funds. Fred Beckmann to handle.

**10:16:43 a.m.**

**Supplemental Materials (Resolution and Lease):**

R7F A Resolution Authorizing The Mayor And City Clerk To Execute A Modification To The Sovereignty Submerged Land Lease No. 130765469 Among The City Of Miami Beach, The Miami Beach Redevelopment Agency And The Trustees Of The Internal Improvement Trust Fund Of The State Of Florida For The Miami Beach Marina, Pursuant To The Request Of The State Of Florida Department Of Environmental Protection (DEP) To Clarify The Existing Uses At The Miami Beach Marina.

**Joint City Commission and Redevelopment Agency.**

(City Manager's Office)

**ACTION: Item heard in conjunction with RDA item 3B. See item RDA 3B for discussion.**

**12:08:06 p.m.**

**1:08:38 p.m.**

**Supplemental Materials (Resolution):**

R7G A Resolution Appropriating Funds In The Amount Of \$313,042 From Gulf Breeze Loan Interest, And Appropriating Funds In The Amount Of \$768,244 From Two Percent Resort Tax, For A Total Appropriation Of \$1,081,286 To Supplement The Miami Beach Golf Course Clubhouse Project Contingency, To Provide For Change Orders, Additional Services, AIPP Fees And CIP Office Fees To Complete The Miami Beach Golf Course Clubhouse Project.

(Capital Improvement Projects)

**ACTION: Resolution No. 2005-25808 adopted.** Motion made by Commissioner Gross; seconded by Commissioner Garcia; Voice vote: 6-0; Abstained: Vice-Mayor Cruz. Patricia Walker to appropriate the funds. Tim Hemstreet to handle.

Jorge Gonzalez, City Manager, introduced the item.

Mayor Dermer stated that everyone handled themselves in a professional manner. The fact that this was handled in a public manner, he believes it was handled the right way.

Jorge Gonzalez, City Manager, stated that Tran has certainly been an integral player in the Capital Improvement Program and their work is appreciated. Addressing Commissioner Smith's concern, the Administration will be looking at the City's other consultants in this matter. There are still outstanding issues which need to be addressed. **Tim Hemstreet to handle.**

Mayor Dermer stated that Commissioner Smith should be included in any future conversations between the Administration and the other parties. **Tim Hemstreet to handle.**

**Handout or Reference Materials:**

1. Form 8B filed by Vice-Mayor Cruz
2. Geotech Report – Proposed 1-Story Bayshore Club House and Maintenance Building /Law Engineering and Environmental Services, Inc., pages 4-5, and 4-6.
3. Specifications – Bayshore Clubhouse & Maintenance Yard

12:06:45 p.m.

**Supplemental Materials (Resolution):**

R7H A Resolution Appropriating Funding In The Amount Of \$182,404, Available From The 1995 Parks Bond Interest, To Supplement Funds For The Construction Improvements To The Lummus Park Facilities Project; Funds Are To Be Reimbursed From The \$7,000,000, Allocated For Said Project In The Miami-Dade County 2004 General Obligation Bonds Approved By The Voters On November 2, 2004.

(Capital Improvement Projects)

**ACTION: Resolution No. 2005-25809 adopted.** Motion made by Commissioner Bower; seconded by Commissioner Smith; Voice vote: 6-0; Absent: Vice-Mayor Cruz. Patricia Walker to appropriate the funds. Tim Hemstreet to handle.

R7I A Resolution Authorizing The Issuance Of (I) Not To Exceed \$40,000,000 In Aggregate Principal Amount Of City Of Miami Beach, Florida Water And Sewer Revenue Bonds, Series 2005a, For The Principal Purpose Of Paying The Cost Of Certain Improvements To The Water And Sewer Utility, Pursuant To Section 209 Of Resolution No. 95-21585 Adopted By The City On May 17, 1995, And (II) Not To Exceed \$40,000,000 In Aggregate Principal Amount Of City Of Miami Beach, Florida Water And Sewer Revenue Refunding Bonds, Series 2005b, For The Principal Purpose Of Refunding All Or A Portion Of The City's Outstanding Water And Sewer Revenue Bonds, Series 1995, Pursuant To Section 210 Of Said Resolution No. 95-21585; Providing That Said Series 2005 Bonds And Interest Thereon Shall Be Payable Solely As Provided In Said Resolution No. 95-21585; Providing Certain Details Of The Series 2005 Bonds; Delegating Other Details And Matters In Connection With The Issuance Of The Series 2005 Bonds And The Refunding Of The Bonds To Be Refunded To The Mayor, Within The Limitations And Restrictions Stated Herein; Authorizing The Negotiated Sale And Award By The Mayor Of The Series 2005 Bonds To The Underwriters, Within The Limitations And Restrictions Stated Herein; Approving The Form Of And Authorizing The Mayor To Execute And Deliver A Bond Purchase Agreement; Authorizing And Directing The Bond Registrar To Authenticate And Deliver The Series 2005 Bonds; Approving The Form Of And Distribution Of A Preliminary Official Statement And Official Statement And Authorizing The Execution And Delivery Of The Official Statement; Providing For The Application Of The Proceeds Of The Series 2005 Bonds And Creating Certain Funds, Accounts And Subaccounts; Authorizing A Book-Entry Registration System With Respect To The Series 2005 Bonds; Authorizing The Refunding, Defeasance And, As Applicable, Redemption Of The Bonds To Be Refunded; Approving The Form Of And Authorizing The Execution And Delivery Of An Escrow Deposit Agreement And Appointing An Escrow Agent; Covenanting To Provide Continuing Disclosure In Connection With The Series 2005 Bonds In Accordance With Securities And Exchange Commission Rule 15C2-12 And Authorizing The Chief Financial Officer To Execute And Deliver A Commitment With Respect Thereto; Appointing A Bond Registrar For The Series 2005 Bonds; Providing For A Credit Facility For The Series 2005 Bonds; Providing For The Deposit Of A Reserve Account Insurance Policy To The Credit Of The Reserve Account And Approving The Form Of And Authorizing The Mayor To Execute And Deliver A Financial Guaranty Agreement With The Provider Thereof; Providing Covenants For The Provider Of Such Credit Facility And Reserve Account Insurance Policy; Authorizing Officers And Employees Of The City To Take All Necessary Related Actions; And Providing For An Effective Date.)  
(Finance Department)

**ACTION: Item withdrawn by the Administration.**

**R9 - New Business and Commission Requests**

R9A Board and Committee Appointments.

(City Clerk's Office)

**ACTION:****Barrier Free Environmental Committee:**

Lee Weiss Term expires 12/31/06 Appointed by Commissioner Bower TL12/05

**Beach Preservation Board:**

Christian Folland Term expires 12/31/06 Appointed by Commissioner Bower TL12/08

Richard Orenstein Term expires 12/31/06 Appointed by Commissioner Steinberg TL 12/11

**Beautification Committee:**

Maria Harris Term expires 12/31/06 Appointed by Mayor Dermer TL 12/10

Helen Owen Term expires 12/31/06 Appointed by Commissioner Smith TL 12/05

**Budget Advisory Committee:**

David Heller Term expires 12/31/06 Appointed by Commissioner Bower TL12/07

**Committee on the Homeless:**

Robert Stark Term expires 12/31/06 Appointed by Commissioner Steinberg TL 12/10

**Community Development Advisory Committee:**

Juan Torres Term expires 12/31/06 Appointed by Commissioner Bower TL12/07

**Community Relations Board:**

Valerie Taylor Term expires 12/31/06 Appointed by Jorge M. Gonzalez City Manager TL 12/11

Octavio Zubizarreta Term expires 12/31/06 Appointed by Jorge M. Gonzalez City Manager TL 12/11

**Convention Center Advisory Board:**

Bernice Martinez Term expires 12/31/06 Appointed by Commissioner Steinberg TL 12/19

Eva Barreto Appointed Ex-officio of the MBCC.

**Convention Center Capital Projects Oversight Committee:**

Julio Lora Term expires 12/31/06 Appointed by Commissioner Bower TL12/09

**Debarment Committee:**

Mathew Krieger Term expires 12/31/06 Appointed by Commissioner Steinberg TL 12/09

**Fine Arts Board:**

Karen Edelstein Term expires 12/31/06 Appointed by Commissioner Garcia TL 12/11

Robert Glick Term expires 12/31/06 Appointed by Commissioner Steinberg TL 12/11

Randie Hofer Term expires 12/31/06 Appointed by Commissioner Bower TL12/05

**Golf Advisory Board:**

Eugene Howard Term expires 12/31/06 Appointed by Commissioner Steinberg TL 12/09

Joe Pallant Term expires 12/31/06 Appointed by Commissioner Bower TL12/08

Jay Scharer Term expires 12/31/06 Appointed by Commissioner Cruz TL 12/12



**Loan Review Committee:**

Jay Parker Term expires 12/31/06 Appointed by Commissioner Steinberg TL 12/11

**Marine Authority:**

Barbara Patchen Term expires 12/31/06 Appointed by Commissioner Steinberg TL 12/05

Juan Rodriguez Term expires 12/31/06 Appointed by Commissioner Bower TL12/07

**Miami Beach Commission on the Status of Women:**

Allison Kumble-Farcus Term expires 12/31/06 Appointed by Commissioner Steinberg TL 12/10

Merrie Thomas Term expires 12/31/06 Appointed by Commissioner Steinberg TL 12/10

**Park and Recreational Facilities:**

Barbara Herskowitz Term expires 12/31/06 Appointed by Commissioner Bower TL12/05

Donna Scharer Term expires 12/31/06 Appointed by Commissioner Cruz TL 12/12/

**Police Citizens Relations Committee:**

Jonathan Beloff Term expires 12/31/06 Appointed by Commissioner Steinberg TL 12/10

Julian Linares Term expires 12/31/05 Appointed by Commissioner Cruz TL 12/12

Kathy Wolfarth Term expires 12/31/06 Appointed by Commissioner Steinberg TL 12/08

**Production Industry Council:**

Pamela Gardiner At-Large Term expires 12/31/06 Appointed by Commissioner Steinberg TL 12/05

Tammy Green Term expires 12/31/06 Appointed by Commissioner Garcia TL12/07

**Public Safety Committee:**

Dr. Baruch Jacobs Term expires 12/31/05 Appointed by Commissioner Garcia TL 12/11

Frank Schwartz Term expires 12/31/06 Appointed by Commissioner Steinberg TL 12/10

**Safety Committee:**

Debra Scholl Term expires 12/31/06 Appointed by Commissioner Gross TL 12/12

Melissa Vignes Term expires 12/31/06 Appointed by Commissioner Bower TL12/11

**Transportation and Parking Committee:**

Maria Saboya Term expires 12/31/06 Appointed by Commissioner Bower TL12/11

**Youth Center Advisory Board:**

Ellen Peterson Term expires 12/31/06 Appointed by Commissioner Steinberg TL 12/08

**Addendum:**

R9A1 Nomination Of Mr. Jeremy T. Chestler, Managing Director Of The Art Center Of South Florida, To The Art In Public Places Committee.

(Requested by Commissioner Luis R. Garcia, Jr.)

**ACTION:** Mr. Jeremy T. Chestler appointed by acclamation of the City Commission. Robert Parcher to handle.

R9B(1) Dr. Stanley Sutnick Citizen's Forum. (1:30 p.m.)

**ACTION:** Item not reached.

R9B(2) Dr. Stanley Sutnick Citizen's Forum. (5:30 p.m.)

**ACTION: Item not reached.**

R9C The City Commission Will Attend Fire Station No. 2 Ground Breaking Ceremony At Noon Break.

**ACTION: Announced and held.**

(City Manager's Office)

**11:43:38 a.m.**

R9D Discussion Regarding North Beach Recreational Corridor And The Richmond Hotel Beachwalk.  
(Requested by Commissioner Jose Smith)

**ACTION: Motion made by Commissioner Gross to approve the demolition of the buildings; seconded by Commissioner Bower; Voice vote: 6-0; Absent: Vice-Mayor Cruz.**

Commissioner Smith stated that he has seen no real movement regarding the North Beach Recreational corridor. He stated that perhaps the State of Florida needs to be pushed by the City.

Jorge Gonzalez, City Manager, stated that the Administration is struggling with getting the permit from the State Department of Environmental Protection. Yesterday, Fred Beckmann, Public Works Director, spoke with Mike Sole, who is trying to move this project along. Mr. Sole reported that in his previous position he had approved it and was surprised that whoever replaced him has not moved along.

Fred Beckmann, Public Works Director, stated that Mike Sole is the Chief of Staff from the FDEP and has indicated that he understand the issues and asked for technical information from the City's Consultants. There is a legal issue as to the definition of the structure. The City's position is that this structure is very similar to what is on the Beach Walk. In the City's opinion it is defined as a minor structure and actually improves the protection of the coastal system. The Legal Department of the FDEP has a different opinion. FDEP has until February 28<sup>th</sup> to either give the City the permit or ask for another time extension. If pavers are required, the cost of the project will be prohibited for the City. If necessary, the City will use its State lobbyists.

Commissioner Smith asked to keep everyone advised on what the State is doing regarding this application. **Fred Beckmann to handle.**

Commissioner Gross asked for a timeline once the permit is issued.

Fred Beckmann, Public Works Department, stated it would take about two years to complete the project.

Randall Robinson, Executive Director to the North Beach Development Corporation, spoke.

Commissioner Gross asked why the two historic houses in Altos Del Mar Park, which the Commission approved to be demolished, have not been demolished. The homeless are creating a problem for the neighbors.

William Cary, Assistant Planning Department Director, spoke.

**Motion made by Commissioner Gross to approve the demolition of the houses as soon as possible; seconded by Commissioner Bower.** Discussion continued.

Commissioner Garcia asked to give the building to the Fire Department to burn the building down for training purposes. The Administration was directed to review. **Chief Jordan to handle.**

Jorge Gonzalez, City Manager, stated the buildings will be demolished, grass will be planted and when the design for the park is completed it will go through the normal Historic Preservation process.

R9E Discussion Regarding The Senior Task Force.  
(Requested by Commissioner Luis R. Garcia, Jr.)

**ACTION: Item withdrawn.**

**12:48:39 p.m.**

R9F Discussion Regarding The New Parking Pay Stations.  
(Requested by Commissioner Matti Herrera Bower)

**ACTION: Discussion held.**

Commissioner Bower stated that she has received complaints with the new parking pay stations. One of the complaints is that the new stations do not give parking card users a credit for time not used. The residents feel the City has installed the new pay stations to make money. She assured them this was not the reason. She gave the following example: The stations did not allow increments other than \$1.00.

Saul Frances, Parking Department Director, stated that Smart Card is consistent with the single space meter which is \$0.25 cents increments and a credit card is \$1.00 increments.

Commissioner Bower stated that this information should be posted. **Saul Frances to handle.**

Commissioner Bower stated that the print is small, it is low and at night the lighting is poor. She also stated that the machine would only allow for one hour when people are trying to enter four hours.

Saul Frances, Parking Department Director, explained that to varying degrees many of the issues have been addressed. The Smart Card and refund issues are some things that can't be resolved. However, the four hour maximum time is being extended to eight hours, if there is time left on the receipt, it will be honored anywhere in the City. He stated that he will look at and try to simplify the graphics. Regarding the height, this is an ADA requirement. **Saul Frances to handle.**

Commissioner Bower added that when it rains the residents need to stand in the rain to pay. **Saul Frances stated that he can look into some type of device or canopy.**

Commissioner Bower asked what a resident should do when the machine is broken and it does not give a ticket.

Saul Frances, Parking Department Director, stated that records are kept on malfunctioning machines and if someone gets a parking citation and it's determined the pay station was malfunctioning the citation can be administratively waived.

Jorge Gonzalez, City Manager, stated that Commissioner Bower has raised some non-debit card issues which need to be addressed, such as making sure the instructions are legible, making sure the facility is available, how to handle out of order machines, and the posting of a telephone number for assistance.

Commissioner Garcia stated that if you buy two-four hour tickets and place them side-by-side on the windshield you should not get a ticket.

Saul Frances stated that if his officers see two receipts they will not issue the parking citation.

Commissioner Garcia stated that this needs to be publicized. **Saul Frances to handle.**

Saul Frances, Parking Department Director, stated that the marketing plan is being worked on and a video will be shown on Channel 20 to inform the public; also there will be more surveys done at Lincoln Road and Ocean Drive.

Commissioner Steinberg suggested checking with Publix to see if they would offer to sell the discount parking cards to shoppers since most of the shoppers at Publix are residents. Regarding the credit card, he suggested to ask the manufacturer if the pay stations can be reprogrammed to accept the minimum of one dollar on the credit card and then accept multiples of less than one dollar. **Saul Frances to handle.**

**1:41:47 p.m.**

R9G Discussion Regarding Proposed Plans For The "City Of Miami Beach Resident Survey."  
(Requested by Commissioner Luis R. Garcia, Jr.)

**ACTION: Discussion held.**

Commissioner Garcia stated his concerns regarding the survey and the form of government. He believes that the public doesn't really know how they are governed. He requested several additional questions be placed on the survey: 1) Are you happy with the performance of your commissioners; and 2) Do you know the type of government in Miami Beach?

Vice-Mayor Cruz stated that any Commissioner should be able to ask any questions he or she wants to ask the residents. He asked the City Manager to explain the rationale for the present structure.

Jorge Gonzalez, City Manager, stated that the survey is not to find out how the person feels about the Mayor, the Manager or the City Commission. The survey is a customer satisfaction driven survey that will help assess the services provided by the City; how do you feel about your parks, your roads; what are priorities, growth management or recreational programs; what would you like to see more of enhanced policing, enhanced fire, etc. He stated that every one was afforded an opportunity to add questions. During the Committee of the Whole meeting a number of questions were deleted. The type of questions left off were the issue driven questions such as how you feel about Bay Link, or the 63<sup>rd</sup> Street flyover, and how do you feel about the form of government. A question regarding the form of government lends itself to confusion.

Commissioner Garcia stated that he is not blaming the City Manager, he is probably one of the best if not the best City Manager he has ever worked with; placing this item on the survey or holding a straw ballot question is not a reflection on his capabilities. He is simply asking to let the people decide.

Commissioner Bower stated that before an item like strong mayor or executive mayor goes on a ballot there needs to be a public awareness campaign to explain the pros and cons of the form of

government proposed. The issue of districts also needs to be defined and explained to the electors. What is the plan and what are the issues to set the basis for debate?

Commissioner Garcia stated that the Charter Review Committee should seek public input.

Mayor Dermer stated that it is an endless debate on which system of government is the most effective and most efficient. He stated that he believes the City has a good manager who has the support and confidence of the Commission and manages the City well. The City is very strong fiscally; these are great times for the City. Typically changes in systems of government usually come in times of crisis.

Commissioner Garcia stated all he wants is to let the people vote.

Commissioner Steinberg suggested perhaps adding one open-ended question such as, are you happy or satisfied with the form of government in the City of Miami Beach?

Commissioner Garcia thanked Commissioner Steinberg and expressed his disappointment.

### **R10 - City Attorney Reports**

#### **R10A Notice Of Closed Executive Session.)**

Pursuant To Section 286.011, Florida Statutes, A Closed Executive Session Will Be Held During Lunch Recess Of The City Commission Meeting On February 2, 2005 In The City Manager's Large Conference Room, Fourth Floor, City Hall, To Discuss Settlement Of The Following Cases:

City Of Miami Beach V. Miami-Dade County, Micky Biss And USA Express, Inc. Third District Court Of Appeal, Case No. 3D04-1589, Lower Case No. 03-682 AP

Micky Biss And USA Express, Inc. V. City Of Miami Beach. 11th Judicial Circuit Court. Case No. 04-18560 CA 11

Micky Biss And USA Express, Inc. V. City Of Miami Beach. 11th Judicial Circuit Court. Case No. 01-11865 CA 10

The Following Individuals Will Be In Attendance: Mayor David Dermer; Members Of The Commission: Matti Herrera Bower, Simon Cruz, Luis R. Garcia Jr., Saul Gross, Jose Smith And Richard Steinberg; City Attorney Murray H. Dubbin, City Manager Jorge Gonzalez, Chief Deputy City Attorney Donald Papy, First Assistant City Attorneys Debora J. Turner And Gary Held.

**ACTION: Announced and held.**

### **Reports and Informational Items**

#### **A City Attorney's Status Report.**

(City Attorney's Office)

**ACTION: Written report submitted.**

- B Status Report On The Rehabilitation Of The Existing Building And Construction Of The New Fire Station No. 2.

(Capital Improvement Projects)

**ACTION: Written report submitted.**

- C Status Report On The Construction Of Fire Station No. 4.  
(Capital Improvement Projects)

**ACTION: Written report submitted.**

- D Informational Report To The Mayor And City Commission, On Federal, State, Miami-Dade County, U.S. Communities, And All Existing City Contracts For Renewal Or Extensions In The Next 180 Days.  
(Procurement)

**ACTION: Written report submitted.**

- E Non-City Entities Represented By City Commission:

1. Minutes From The November 16, 2004 Performing Arts Center Trust Board Meeting And Agenda For The January 18, 2005 Meeting.  
(Requested by Commissioner Matti Herrera Bower)

**ACTION: Written report submitted.**

**End of Regular Agenda**

**Miami Beach Redevelopment Agency  
Commission Chambers, 3rd Floor, City Hall  
1700 Convention Center Drive  
February 2, 2005**

Chairman of the Board David Dermer  
Member of the Board Matti Herrera Bower  
Member of the Board Simon Cruz  
Member of the Board Luis R. Garcia, Jr.  
Member of the Board Saul Gross  
Member of the Board Jose Smith  
Member of the Board Richard L. Steinberg

Executive Director Jorge M. Gonzalez  
Assistant Director Christina M. Cuervo  
Assistant Director Mayra Diaz Buttacavoli  
General Counsel Murray H. Dubbin  
Secretary Robert E. Parcher

**AGENDA**

1. ROLL CALL

2. OLD BUSINESS

- A Report Of The Itemized Revenues And Expenditures Of The Miami Beach Redevelopment Agency For The Month Of December 2004.

**ACTION: Written report submitted.**

**10:16:26 a.m.**

3. NEW BUSINESS

- A A Resolution Of The Chairman And Members Of The Miami Beach Redevelopment Agency Amending Resolution No. 491-2004, Setting The Dates For The Year 2005 Redevelopment Agency (RDA) Meetings; Authorizing A Change In The RDA Meeting Date From April 13, 2005 To April 20, 2005. **Joint City Commission and Redevelopment Agency**

**ACTION: Item heard in conjunction with item R7C. Resolution No. 496-2005 adopted.** Motion made by Commissioner Garcia; seconded by Commissioner Bower; Voice vote: 6-0; Absent: Vice-Mayor Cruz. Robert Parcher to handle.

10:16:43 a.m.

**Supplemental Materials (Resolution):**

- B A Resolution Of The Chairman And Members Of The Miami Beach Redevelopment Agency Authorizing The Chairman And Secretary To Execute A Modification To The Sovereignty Submerged Land Lease No. 130765469 Among The City Of Miami Beach, The Miami Beach Redevelopment Agency And The Trustees Of The Internal Improvement Trust Fund Of The State Of Florida For The Miami Beach Marina, Pursuant To The Request Of The State Of Florida Department Of Environmental Protection (DEP) To Clarify The Existing Uses At The Miami Beach Marina. **Joint City Commission and Redevelopment Agency.**

**ACTION: Item heard in conjunction with item R7F. Item referred to the Finance and Citywide Projects Committee and the Administration to provide background materials.**

Motion made by Commissioner Bower; seconded by Commissioner Gross; Voice vote: 7-0. Patricia Walker to place on the committee agenda. Christina Cuervo to handle.

Item presented by Christina Cuervo, Assistant City Manager.

Carter McDowell, Esq. representing the Miami Beach Marina Associates spoke.

Motion made by Commissioner Gross to move the item; seconded by Commissioner Steinberg. The discussion continued and no vote was taken.

Gil Zriny spoke and asked the City Commission to look carefully at the Lease and get the best deal for the residents.

Mayor Dermer stated that he believes that the people of the City deserve to get more than what they have been given. Discussion continued.

Motion made by Commissioner Bower to refer item to the Finance and Citywide Projects Committee; seconded by Commissioner Gross; Voice vote: 7-0.

Commissioner Gross requested the Administration to provide background information.



10:45:17 a.m.

C Verbal Status Report On The RDP Royal Palm Hotel Limited Partnership ("RDP").

**ACTION:** A verbal report updating the City Commission on the RDP closing was given by the City Attorney, First Assistant City Attorney Raul J. Aguila, and Attorney Joel M. Minsker (outside counsel). The RDP closing is currently scheduled for February 4, 2005. The purpose of this report was to advise the City Commission that the City Attorney had received notice last week from RDP Royal Palm Hotel Limited Partnership (RDP) requesting a change in the order the conveyance of documents at the time of closing as follows:

- 1) At closing, RDP (as the tenant under the Ground Lease between RDP, the City and the RDA) proposed to assign its option to purchase the Hotel to the prospective purchaser, the Falor Group (for \$100 and other good and valuable consideration).
- 2) The Falor Group would then pay the City/RDA the Purchase Price (which is established pursuant to a formula under the Ground Lease). This would be a taxable transaction which would require payment of documentary stamps (in the approximate amount of \$100,000).
- 3) The City/RDA would deed the fee to Falor, subject to the Ground Lease.
- 4) Falor and RDP would then enter into a Lease Termination Agreement, with Falor paying the balance of the Purchase Price to RDP (approximately \$117,000,000) to obtain that Termination.

The benefit to RDP in requesting the aforesaid order of conveyances, which would occur simultaneously at the closing table, along with RDP's lender, North Fork Bank, being paid off, is that, as researched by RDP's attorney, there is nothing under Florida law which states that a termination of a Lease is a taxable transaction requiring the payment of documentary stamps.

Were RDP to convey the Hotel in the order originally planned (i.e. RDP pays off the City/RDA; RDP gets the Deed; the Lease is terminated; and RDP then conveys to Falor), RDP would be required to pay documentary stamps in the sale of the Hotel to Falor in an amount between \$1,200,000 to \$1,300,000. Therefore the new option would represent a significant cost savings to RDP.

The City Attorney opined that his office had reviewed the proposed order of conveyances carefully, particularly with regard to any exposure to the City/RDA resulting from same. The City Attorney stated that the option to purchase the Hotel is severable from the Ground Lease only (as in this case) in the event of a sale of the Hotel. Additionally, in order to address the City Attorney's concerns regarding any potential liability to the City/RDA; the City Attorney had requested, as a condition precedent to the City's/RDA's agreement of the proposed new order of conveyances at closing, that:

- 1) in addition to the indemnity already provided by RDP, that Don Peebles personally indemnify the City from any challenges which would result against the City in the event that additional documentary stamps were due under the proposed transaction, and/or in the event of a challenge from RDP's lender, North Fork Bank;
- 2) an opinion letter made out to the City/RDA given from RDP and Mr. Peebles' law firm, Hunton & Williams, stating that the proposed order of conveyances was permissible, legal, and that the exposure to the City would be minimal, if any.

Under the aforesaid circumstances, the City Attorney's opined that, were the City to consent to the proposed order of conveyances proposed by RDP, the City exposure would be minimal, if any, (and, additionally, the personal indemnity by Mr. Peebles and the opinion

letter would serve to additionally protect the City/RDA).

Commissioner Smith stated that he was concerned by a potential challenge from RDP's lender, North Fork Bank, but was comfortable with the assurances made by the City Attorney, and the safe guards taken to minimize the City/RDA's exposure. He does not want City/RDA jeopardized or exposed to liability—particularly from RDP's lender, North Fork Bank.

Commissioner Gross was not comfortable with the change. Although the City Attorney stated that he was bringing this before the City Commission at this time as a request from RDP, and that this change was in no way generated by the City/RDA, which was prepared to go forward with closing in the order as originally planned, Commissioner Gross stated that the matter essentially had nothing to do with the City/RDA. We don't need to get involved in it, and we would just be agreeing with it to save RDP money in paying documentary stamps under their transaction. We should just go forward with closing in the order as planned, and let RDP do whatever it needs to do in its transaction.

Commissioner Cruz stated that the overriding rationale has to be that the City/RDA not put itself in a position where it's going to get sued, although he felt that given that this was such a high profile matter that he had no doubt that the proposed order of closing by RDP was a legal mechanism devised by RDP to save money on the payment of documentary stamps by RDP. Nonetheless, the City Commission's first responsibility is to the City.

Mayor Dermer agreed with Commissioner Gross and was not amenable to changing the order of closing, particularly if it meant increasing the City's exposure in any way.

Although no formal action was required or taken on the verbal status report, the City Attorney was instructed to inform Mr. Peebles, through his counsel, that the City/RDA proceed with closing at originally planned.

**1:13:20 p.m.**

Don Peebles appeared to address the City Commission with regard to the position taken by the Commission earlier as to the proposed order of conveyances for the RDP closing, scheduled for February 4, 2005.

Mr. Peebles clarified and emphasized that he was in no way asking the City/RDA to avoid any payment of documentary stamps, nor was he intending to circumvent any law with regard to RDP's responsibility for same. The proposed order of conveyances was a legal mechanism. As additional security, he intended to escrow the full amount of documentary stamps due for the transaction, pending receipt of a binding letter from the State Department of Revenue as to the appropriateness of the approach being taken at closing and the amount of documentary stamps due. If the State Department of Revenue were to opine that RDP was required to pay an additional amount of documentary stamps, RDP would pay and the City/RDA would bear no additional responsibility for payment of documentary stamps (other than for the documentary stamps due as a result of the payment of the Purchase Price under the Ground Lease to the City/RDA). Mr. Peebles also stated that he had spoken to the City Attorney, and had agreed to personally indemnify the City/RDA, and obtain an opinion letter from his counsel, Hunton & Williams, for the benefit of the City/RDA.

The City Commission stated that it was not aware that Mr. Peebles had escrowed the full amount of documentary stamps. The City Attorney's Office also went on the record stating that until Mr. Peebles stated that he had escrowed the full amount of documentary stamps on the record on this date, it had not been conveyed to them as well. Mr. Peebles apologized for not making anyone aware of this until now.

Commissioner Gross still expressed concern to modifying the documents and/or order of conveyances, particularly in light of RDP's adversarial relationship with its lender, North Fork Bank. Mr. Peebles stated that North Fork Bank is getting paid off at closing, which is all that they're entitled to claim. He also stated that it was his opinion that any potential default would be cured by the lender being paid off. Additionally, at the request of the City Attorney, and in addition to an indemnity already provided by RDP, Mr. Peebles had agreed to personally indemnify the City/RDA from any potential claim brought by North Fork Bank.

The City Commission emphasized that it did not want to get involved and it wanted the City/RDA to be insulated from any dispute between RDP and North Fork Bank. It instructed the Legal Department to do whatever it needed to do to insulate the City from any potential lawsuit from the lender. The City Attorney stated that it had already done so, again citing the personal indemnification from Mr. Peebles and the opinion letter from Hunton & Williams.

The City Commission praised Commissioner Gross for raising issues germane to the City/RDA and to protect the City/RDA in this transaction. The additional information provided by Mr. Peebles regarding the escrow of the full amount of documentary stamps which could be due, as well as the City Attorney's request and receipt of the personal indemnification from Mr. Peebles and the opinion letter from Hunton & Williams gave the City Commission a heightened comfort level with the proposed order of conveyances, as proposed by RDP.

The report was concluded by confirming that closing was currently scheduled for February 4, 2005.

### **End of RDA Agenda**

Meeting adjourned 2:03:05 p.m.